

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Herb Hyman-(954) 797-1016

SUBJECT: Resolution

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH ASHBRIIT, INC. FOR DISASTER RECOVERY SERVICES, BROWARD COUNTY RLI #08100-00-RB.

REPORT IN BRIEF:

The Town and its citizens would benefit from having a contract for disaster recovery services which would offer: debris removal, technical disaster recovery assistance, temporary satellite communications, emergency power generators, emergency delivery of ice, emergency delivery of potable water, emergency equipment rental, labor, materials and supplies during a state or local state of emergency situation. The initial term of the contract is three (3) years from its inception and can be renewed for two (2) additional one (1) year terms by mutual agreement of the parties. There is no cost to the Town unless the Town requests services under the terms of this contract. In the event the Town would require the services of Ashbriit, Inc., the cost would generally qualify for reimbursement from FEMA. Ashbriit would assist the Town in filing for any reimbursements from FEMA.

PREVIOUS ACTIONS:

Not applicable.

CONCURRENCES:

The recommended award has been reviewed by the Procurement Manager and the Public Works/Capital Projects Manager who concur with the decision to accept the award made by Broward County to Ashbriit, Inc.

FISCAL IMPACT:

Has request been budgeted? Not applicable

If yes, expected cost-

Account Name:

Additional Comments: Not applicable

RECOMMENDATION(S):

Motion to approve the resolution.

Attachment(s):

Resolution

Two (2) copies of the contract

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH ASHBRIIT, INC. FOR DISASTER RECOVERY SERVICES, BROWARD COUNTY RLI #08100-00-RB.

WHEREAS, the Town and its citizens would benefit from having a contract for disaster recovery services; and

WHEREAS, Broward County has solicited sealed proposals and selected Ashbriit, Inc. to provide these services; and

WHEREAS, after review, the Town Council wishes to authorize the Mayor to execute a contract with Ashbriit, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council hereby approves the award made by Broward County to Ashbriit, Inc. for disaster recovery services, and authorizes the Mayor to execute a contract with Ashbriit, Inc. which is attached hereto and identified as Attachment "A".

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED ____ DAY OF _____, 2001

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2001

Attachment "A"

AGREEMENT
BETWEEN
TOWN OF DAVIE
AND
ASHBRITT, INC.
FOR
DISASTER RECOVERY SERVICES

WHEREAS, the Town of Davie, a Town of the State of Florida, may experience destruction of life and property because of hurricanes, floods, tornadoes, and other weather events as well as other natural or technological disasters; and

WHEREAS, governing bodies of political subdivisions of the State of Florida need to provide for disaster recovery technical and support assistance; and

WHEREAS, although the Town of Davie has personnel, equipment, and price agreements in place to manage disaster recovery for most emergency situations, a major catastrophe may overwhelm local capabilities to the point that outside assistance will be required; and

WHEREAS, during a state or local state of emergency the Town Administrator may deem it necessary to issue notices to proceed with certain disaster services, Now, Therefore,

This is an Agreement, made and entered into by and between: the Town of Davie, a political subdivision of the State of Florida, herein after referred to as "Town",

And

Ashbritt, Inc, a Florida Corporation, hereinafter referred to as "Ashbritt".

In Consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Town and Ashbritt agree as follows:


ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

- 1.1 **Agreement** - means this document, articles 1 through 9, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Board** - The Town Council.
- 1.3 **Town Administrator** - The Town of Davie Administrator or the designee of such Town Administrator. The primary responsibilities of the Town Administrator are to coordinate and communicate with Ashbritt and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this agreement, as set forth herein. In the administration of this Agreement, as contrasted with the matters of policy, all parties may rely on instructions or determinations made by the Town Administrator; provided, however, that such instructions and determinations do not change the scope of Services.
- 1.4 **Town Attorney** - The chief legal counsel for the Town who directs and supervise the office of the Town Attorney.
- 1.5 **Project** - The Project consists of the services described in Article 2.

ARTICLE 2

SCOPE OF SERVICES

- 2.1 Ashbriitt shall perform all work identified in this agreement and "Exhibit A" and "Exhibit B". The parties agree that the scope of services is a description of Ashbriitt's obligations and responsibilities and is deemed to include preliminary consideration and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Ashbriitt impractical, illogical, or unconscionable. This agreement does not establish exclusive rights on the part of Ashbriitt and the Town may at its option retain additional contractors to assist in disaster recovery efforts.
- 2.2  Ashbriitt acknowledges and agrees that the Town Administrator has ^{the} ~~no~~ authority to make changes that would increase, decrease, or otherwise modify the scope of services to be provided under this agreement, as limited by 2.3 below, and as agreed to by Contractor.
- 2.3 All work will be described by a work authorization form that will be signed by the Town administrator, or his designee, and shall describe the extent and limits of each task. No work shall be compensated that is not in accordance with an approved work authorization.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 The term of this agreement shall begin on the date it is fully executed by both parties and shall end three (3) calendar years hence; however, the term of the Agreement may be extended twice for one (1) year periods of time, each time with mutual approvals of the Town acting by and through its Purchasing Director and Ashbriitt subject to satisfactory performance and authorization by the Purchasing Director. If the term of this agreement extends beyond a single fiscal year of the Town, the continuation of this agreement beyond the end of any fiscal year shall be subject to the availability of funds from the Town in accordance with Chapter 129, Florida Statutes.
- 3.2 Time shall be deemed of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 4

COMPENSATION

- 4.1 The Town agrees to pay Ashbriitt, in the manner specified in Section 4.2, for work actually performed and completed pursuant to this agreement and as detailed in an approved work authorization, which amount shall be accepted by Ashbriitt as full compensation for all such work. It is acknowledged and agreed by Ashbriitt that this amount is the maximum payable and constitutes a limitation upon the Town's obligation to compensate Ashbriitt for its services related to this agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Ashbriitt's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. Ashbriitt is only eligible for compensation for specifically approved and successfully completed work authorizations. No amount shall be paid to Ashbriitt to reimburse its expenses. Work authorization costs connected to Exhibits "A" and "B" shall be payable based on a standard of reasonableness, but in no circumstance shall the Town be liable to Ashbriitt for costs that exceed reasonable costs as determined by the Federal Emergency Management Agency (FEMA). Ashbriitt shall reimburse costs paid by the Town to Ashbriitt at rates that are determined by FEMA as not reasonable to the Town.

4.2 Method of Billing and Payment

- 4.2.1 Ashbriitt may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after

this agreement expires. Invoices shall reference the specific work authorization and approval date and designate the nature of the services performed and/or the expenses incurred.

- 4.2.2 Ashbritt hereby waives all rights to make claims for prompt payment that Ashbritt may accrue pursuant to the general statutory laws relating to prompt payment or both.

- 4.3 Notwithstanding any provision of this Agreement to the contrary, the Town may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Town Administrator, or his designee. The amount withheld shall not be subject to payment of interest by the Town.

- 4.4 Payment shall be made to Ashbritt at:

Ashbritt, Inc.
1280 SW 36th Ave.
Suite 102
Pompano Beach, FL 33069

ARTICLE 5

CHANGES IN SCOPE OF SERVICES

- 5.1 Any change in Scope of Services must be accompanied by a written amendment, executed by the parties in accordance with Section 9.18 below.

ARTICLE 6

INDEMNIFICATION

- 6.1 Ashbritt shall at all times hereafter indemnify, hold harmless and, at the Town Attorney's option, defend or pay for an attorney selected by the Town Attorney to defend the Town, its officers, agents, servant, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of Ashbritt, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Town Administrator and the Town Attorney, any sums due Ashbritt under this agreement may be retained by the Town until all of the Town's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by the Town.

ARTICLE 7

INSURANCE

- 7.1 In order to insure the indemnification obligation contained above, Ashbritt shall, as a minimum, provide, pay for, and maintain in force at all times during the term of this agreement (unless otherwise provided), the insurance coverage/s as set forth in Sections 7.3, 7.4, and 7.5, in accordance with the terms and conditions required by this article. Each Insurance policy shall clearly identify the foregoing indemnification as insured.
- 7.2 Such policy or policies shall be without any deductible amount and shall be issued by approved companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in the Town of Davie, Florida. Ashbritt shall specifically protect the Town and the Town Council by naming the Town and the Town Council as additional insured under the Comprehensive General Liability policy only.
- 7.3 **Comprehensive General Liability Insurance.** A Comprehensive General Liability insurance Policy shall be provided which shall contain minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence combined single

limit for bodily injury liability and property damage liability. Coverage must be afforded on a form no more restrictive than the latest edition of Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

- Premises and /or operations
- Independent Contractors
- Products and/or Completed Operations for contracts
- Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or indemnification agreement.
- Personal Injury coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for bodily injury liability and Property damage liability.

- 7.4 **Business Automobile Liability.** Business Automobile liability with minimum limits of Three Hundred Thousand Dollars (\$300,000.00) per occurrence combined single limit for bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

- Owned Vehicles
- Hired and Non-owned Vehicles
- Employers' Non-Ownership

- 7.5 **Worker's Compensation Insurance.** Worker's compensation Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:


Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) each accident.

If any operations are to be undertaken on or about navigable waters, coverage must be included for the US Longshoremen & Harbor Workers Act and Jones Act.

- 7.6 Ashbritt shall furnish to the Town Administrator, or his designee, Certificates of Insurance or endorsements evidencing the insurance coverage's specified by this Article prior to beginning performance of work under this agreement.
- 7.7 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of Ashbritt is completed. All policies must be endorsed to provide the Town with at least thirty (30) days notice of cancellation and/or restriction. If any of the insurance coverage's will expire prior to the completion of work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

ARTICLE 8

TERMINATION

-  8.1 This agreement may be terminated for cause by action of the Town Council or by Ashbritt if the party in breach has not corrected the breach within ten (10) calendar days after written notice from the aggrieved party identifying the breach, or for convenience by action of the Town Council upon not less than sixty (60) calendar days' written notice by the Town Administrator, or his designee. This Agreement may also be terminated by the Town Administrator, or his designee, upon such notice as the Town Administrator deems appropriate under the circumstances, in the event the Town Administrator, or his designee determines that termination is necessary to protect the public health, safety, or welfare. Failure to perform in accordance with a work authorization may, at the Town's option, result in immediate termination of this agreement for cause.
- 8.2 Termination of this agreement for cause shall include, but not be limited to, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of the Town as set forth in this Agreement and detailed in an approved work authorization, or multiple breach of the provisions of this Agreement not withstanding whether any such breach was previously waived or cured.

- 8.3 Notice of termination shall be provided in accordance with the "Notices" section of this agreement except that notice of termination by the Town Administrator, or his designee, which Town Administrator, or his designee, deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "Notices" section of this agreement.
- 8.4 In the event this agreement is terminated for convenience, Ashbrite shall be paid for any services performed to date the Agreement is terminated; however, upon being notified of the Town's election to terminate, Ashbrite shall refrain from performing further services or incurring additional expenses under the terms of this agreement. Ashbrite acknowledges and agrees that one hundred dollars (\$100.00) of the compensation to be paid by the Town, the adequacy of which is hereby acknowledged by Ashbrite, is given as specific consideration to Ashbrite for the Town's right to terminate this agreement for convenience.
- 8.5 In the event this agreement is terminated, any compensation payable by the Town shall be withheld until all documents are provided to the Town pursuant to Section 9.1 of Article 9.

ARTICLE 9

MISCELLANEOUS

- 9.1 **Ownership of Documents** - Any and all reports, photographs, surveys and other data and documents provided or created in connection with this agreement are and shall remain the property of the Town. In the event of termination of this agreement, any reports, photographs, surveys, and other data and documents prepared by Ashbrite, whether finished or unfinished, shall become the property of the Town and shall be delivered by Ashbrite to the Town Administrator within seven (7) days of termination of this agreement by either party. Any compensation due to Ashbrite shall be withheld until all documents are received as provided herein.
- 9.2 **Audit Right and Retention of Records** - Town shall have the assignable right (to FEMA, for example) to audit the books, records, and accounts of Ashbrite that are related to this project. Ashbrite shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the project.

Ashbrite shall preserve and make available, at reasonable times for examination and audit by the Town, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (chapter 119, Fla. Stat.), if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of three years after termination of this agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by the Town to be applicable to Ashbrite's records, Ashbrite shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Ashbrite. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for the Town's disallowance and recovery of any payment upon such entry.

- 9.3 **Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act** - Ashbrite shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this agreement. Ashbrite shall affirmatively comply with all applicable provisions of the Americans with disabilities Act (ADA) in the course of providing any services funded by the Town, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines and standards. In addition, Ashbrite shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

Ashbrite's decisions regarding the delivery of services under this agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

Ashbrite shall not engage in or commit any discriminatory practice in performing any services pursuant to this agreement.

- 9.4 **Public Entity Crime** - Ashbritt represents that the execution of this agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to the Town, may not submit a bid on a contract with the Town for the construction or repair of a public building or public work, may not submit bids on leases of real property to the Town, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the Town, and may not transact any business with the Town in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty six months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this agreement and recovery of all monies paid hereto, and may result in debarment from the Town's competitive procurement activities.

In addition to the foregoing, Ashbritt further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Ashbritt has been placed on the convicted vendor list.

- 9.5 **Independent contractor** - Ashbritt is an independent contractor under this Agreement. Services provided by Ashbritt pursuant to this agreement shall be subject to the supervision of Ashbritt. In providing such services, neither Ashbritt nor its agents shall act as officers, employees, or agents of the Town. This agreement shall not constitute or make the parties a partnership or joint venture.
- 9.6 **Third Party Beneficiaries**- Neither Ashbritt nor the Town intend to directly or substantially benefit a third party Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 9.7 **Notices**- Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgement of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

For the Town of Davis:

For Ashbritt:

Mr. Randall Perkins, Vice President
Ashbritt, Inc.
1280 SW 36 Avenue
Suite 102
Pompano Beach, FL 33069

- 9.8 **Assignment and Performance**- Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, Ashbritt shall not assign any portion of the work required by this Agreement. It is envisioned that substantial subcontracting will take place on the part of Ashbritt in order to accomplish approved work authorizations. Ashbritt will provide an updated list of subcontractors on a daily basis to the Town's Project Manager.

Ashbritt represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and approved work authorization services to the Town's satisfaction for the agreed compensation.

Ashbritt shall perform its duties, obligations, and services under this Agreement in a skillful and respectful manner. The quality of Ashbritt's performance and all interim and final product(s) provided to or on behalf of the Town shall be comparable to the best local and national standards.

- 9.9 **Conflicts-** Neither Ashbritt nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Ashbritt's loyal and conscientious exercise of judgment related to its performance under this Agreement.

Ashbritt agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against the Town in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, Ashbritt agrees that such persons shall not give sworn testimony or issue a report of writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of the Town in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude Ashbritt or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event Ashbritt is permitted to utilize subcontractors to perform any services required by this Agreement, Ashbritt agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

- 9.10 **Contingency Fee-** Ashbritt warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Ashbritt, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Ashbritt, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, the Town shall have the right to terminate this Agreement without liability at this discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

- 9.11 The Town and Ashbritt agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

The Town's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

- 9.12 **Compliance with Laws-** Ashbritt shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

- 9.13 **Severance-** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid; the remaining provisions shall continue to be effective unless the Town or Ashbritt elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

- 9.14 **Joint Preparation-** The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be constructed more severely against one of the parties than the other.

- 9.15 **Priority Of Provisions-** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement the term, statement, requirement, or provision contained in Articles 1 through 9 of this Agreement shall prevail and be given effect.

- 9.16 **Applicable Law and Venue-** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth judicial Circuit of the Town of Davie, Florida. By entering into this Agreement, Ashbritt and

Town hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of the Project.

9.17 **Amendments-** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Town and Ashbritt.

9.18 **Prior Agreements-** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 9.18 above.

9.19 **Incorporation by Reference-** The attached exhibits A, B, C, D, and E are incorporated into and made a part of this Agreement.

9.20 **Multiple Originals-** This Agreement may be fully executed in three (3) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

IN WITNESS WHEREOF, the parties hereto have made and executed this agreement: TOWN OF DAVIE through its TOWN COUNCIL, signing by and through its Mayor, authorized to execute same by Council action on the _____ day of _____, 2001, and ASHBRIIT, signing by and through its President, duly authorized to execute same.

AGREEMENT BETWEEN TOWN OF DAVIE AND ASHBRIIT, INC. FOR DISASTER RECOVERY SERVICES

TOWN

ATTEST:

TOWN OF DAVIE, by and through
its Town Council

Town of Davie

Mayor

____ day of _____, _____

Approved as to form by

By _____

By _____

AGREEMENT BETWEEN TOWN OF DAVIE AND ASHBRIIT, INC., FOR DISASTER RECOVERY SERVICES

ASHBRIIT

ASHBRIIT, INC.

WITNESSES:

Robert Lannon
[Signature]

By [Signature]
Sally Perkins, President

30 day of August, 2001.

EXHIBIT A

1. **Debris Management.** ASHBTRIT shall remove all hazards to life and property resulting from the disaster. Clean-up, demolition, and removal shall be work authorization approved by the TOWN Project Manager by individual work authorizations. Clean-up, demolition, and removal shall be limited to eligible debris. Eligible debris is that which after its clean-up, demolition, and removal: 1) eliminates immediate threats to life, public health, and safety; 2) eliminates threats of significant damage to improved public or private property; and 3) is essential by its absence of ensuring economic recovery. Scope of Services shall include items such as emergency road clearance, debris removal from public rights-of-way, removal of hazardous stumps, leaning trees/limbs, temporary debris staging areas and reduction sites, debris disposal, hazardous waste abatement, and sand screening, etc.
2. **Technical Disaster Recovery Assistance.** ASHBTRIT shall provide disaster recovery technical assistance to elected and appointed officials of the TOWN. This assistance shall include documentation and management for the public assistance program, planning, training, and exercise development, as well as attendance at the Town of Davie Emergency Operations Center (EOC) during activation of the EOC for exercise and actual emergency events as requested by the Town Administrator, or his designee.
3. **Temporary Satellite Communications.** ASHBTRIT shall provide Temporary Satellite Communications equipment and "on-air" talk time to the TOWN to facilitate emergency communications within the TOWN and with outside agencies because of the loss of communications capability. Specifically, ASHBTRIT shall provide the satellite communications equipment and space time as listed in the work authorizations and the notice to proceed.
4. **Emergency Power Generators.** ASHBTRIT shall provide Temporary Emergency Power Generators to TOWN to supply temporary electricity to critical facilities because of power failures. Specifically, ASHBTRIT shall provide the power generation equipment to the capacity and quantity as listed in the work authorizations and the notice to proceed.
5. **Emergency Delivery of Ice.** ASHBTRIT shall provide an Emergency Supply of Ice to TOWN to facilitate food storage and other life sustaining measures. Specifically, ASHBTRIT shall provide the ice within the specifications and quantities as listed in the work authorizations and the notice to proceed.
6. **Emergency Delivery of Potable Water.** ASHBTRIT shall provide an Emergency Supply of Potable Water to TOWN to facilitate a safe supply of water for human consumption, cooking of food, and other life sustaining measures. Specifically, ASHBTRIT shall provide the potable water within the specifications and quantities as listed in the work authorizations and the notice to proceed.
7. **Emergency Equipment Rental, Labor, Materials, and Supplies.** ASHBTRIT shall provide Emergency Rental of Light, Medium, and Heavy Equipment; Trucks and other Vehicles; Labor; Materials; and Supplies as requested by TOWN. Specifically, ASHBTRIT shall provide the rental of light, medium, and heavy equipment; trucks and other vehicles; labor; materials; and supplies as listed in the work authorizations and the notice to proceed.
8. **Logistical Staging Areas.** ASHBTRIT shall provide for the operation and management of Logistical Staging Areas to facilitate disaster recovery operations. Specifically, ASHBTRIT shall provide for the supplies and labor for the operations and management needed to establish and operate Logistical Staging Areas within the specifications and quantities as listed in the work authorizations and the notice to proceed.
9. **Services and Facilities.** ASHBTRIT shall provide and pay for all labor, tools, equipment, transportation, supervision, and all other services and facilities of any nature whatsoever necessary to execute, complete and deliver the services within the term specified in the work authorization. All work authorizations involving a time and materials portion of this Agreement shall have a not-to-exceed amount placed within them.
10. **Permits and Licenses.** ASHBTRIT shall obtain, with the assistance of TOWN, Permits and Licenses of a temporary nature necessary for the prosecution of Services. ASHBTRIT shall not be responsible to obtain permits or licenses where the requirement for which has or will be waived because of a declaration of emergency or disaster.

11. Supervision by ASHBRIIT. Under the general oversight of the TOWN, ASHBRIIT shall supervise and direct all work, workers, and equipment. ASHBRIIT is solely responsible for the means, methods, techniques, sequences, safety program, and procedures utilized. ASHBRIIT shall employ and maintain on the work site a qualified supervisor(s) who shall have full authority to act on behalf of ASHBRIIT, and all communications given to the supervisor in writing by the TOWN'S Authorized Representative shall be as binding as if given to ASHBRIIT.
12. Other Related Work. ASHBRIIT shall perform other related work as directed by the Town Administrator.

Exhibit B

Disaster Recovery Services

RLI # 08100-00-RB

All prices noted in this attachment are considered a baseline estimate. Actual prices that will be charged will be justified at the time a work authorization is approved. All costs must be based upon reasonable expenses for labor, equipment, material, and overhead/profit. Under no circumstances will costs that exceed reimbursable limits acceptable to the Federal Emergency Management Agency (FEMA) be proposed or approved in a work authorization.

Emergency Road Clearance

AshBritt shall accomplish the cutting, tossing, and/or pushing of debris, hanging limbs, or leaning trees from primary roads as identified and directed by the Town of Davie. The debris shall be stacked on the right-of-way to allow passage of vehicles along the primary transportation routes.

Compensation per attached hourly rate schedule.

Debris Removal from Public Right-of-Way

As directed by the Town of Davie, AshBritt shall load and haul all eligible debris to a Town designated Temporary Debris Storage and Reduction Site (TDSRS) or other disposal destination.

0 to 15 miles \$12.75 per cubic yard
16 to 30 miles \$15.75 per cubic yard

Debris Separation/Reduction and TDSRS Management

AshBritt shall operate and manage the TDSRS to accept and process all event debris. AshBritt shall perform any site preparation, to include but not limited to: (1) building and/or maintaining roads; (2) construction of a roofed inspection tower sufficient for a minimum of three inspectors; (3) any environmental requirements necessary to include wind control fencing, silt fencing, hazardous materials containment area, and/or water retention berms. All debris will be processed in accordance with all local, state and federal rules, standards and regulations. Processing may include, but is not limited to, reduction by tub grinding, incineration when approved, or other alternate methods of reduction such as compaction. Prior to reduction all debris will be segregated between vegetative debris, C&D, recyclable debris, white goods, and hazardous waste. Upon the closure of the TDSRS the site will be restored to its Pre-Use Condition.

Operation of TSDRS \$6.75 per cubic yard

Hazardous Stumps

AshBritt shall remove hazardous stumps as identified and directed by the Town of Davie. Stump removal shall include backfilling the void with appropriate fill material and hauling the stump to the TDSRS.

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| Stumps up to 6 inches in diameter | \$ 125.00 |
| Stumps greater than 12 inches, less than 24 inches | \$ 250.00 |
| Stumps greater than 24 inches, less than 48 inches | \$ 500.00 |
| Stumps equal to or greater than 48 inches | \$1250.00 |

Sand Screening

As directed by the Town of Davie, AshBritt shall screen sand to remove all eligible debris deposited by the event. This process includes the collection of debris laden sand, transporting the sand to the processing screen located on the beach, processing the debris laden sand through the screen and returning the sand to the approximate original location. Debris removed from the sand will be collected, hauled, and processed as ROW debris.

Sand Screening \$12.00 per cubic yard

Final Disposal

AshBritt shall load and transport processed debris to from the TDSRS to a final disposal site as directed by the Town of Davie.

0 to 15 miles \$7.00 per cubic yard
15 to 30 miles \$8.50 per cubic yard

Technical Assistance

AshBritt shall provide disaster recovery technical assistance to elected and appointed officials of the Town of Davie. This service shall include documentation and management for the public assistance program, planning, training, and exercise development.

Service provided at no additional charge

Permits and Licensing

AshBritt shall obtain, with the assistance of the Town of Davie, permits and licenses of a temporary nature necessary for the execution of the scope of services.

Service provided at no additional charge

Quality Assurance and Supervision

AshBritt shall provide sufficient supervision and programmatic controls to ensure compliance with procedural and regulatory standards established by FEMA, State of Florida, and Town of Davie.

Service provided at no additional charge

Temporary Satellite Communications

AshBritt shall provide temporary satellite communications equipment and service as directed by the Town of Davie to facilitate emergency communications within the Town of Davie and with state and federal agencies supporting the Town of Davie's recovery effort.

Satellite Communications provided at actual equipment lease and airtime cost plus 15%

Emergency Delivery of Ice

As directed by the Town of Davie, AshBritt shall provide an emergency supply of ice to facilitate food storage and other life sustaining measures. Ice is delivered by refrigerated trucks in 40,000 lb increments, with 20 pallets of bagged ice to each delivery.

Emergency Ice \$0.31 per pound*

 Additional Charge for storage

 Additional Charge for final distribution

 Additional Charge for standby (waiting to unload) past 4 hours

Emergency Delivery of Potable Water

As directed by the Town of Davie, AshBritt shall provide an emergency supply of water to facilitate a safe water supply for human consumption, cooking of food, and other life sustaining measures. Water is delivered by truck with 20 pallets per trailer.

Emergency Water \$1.90 per gallon*

\$0.15 per gallon to unload

Additional Charge for storage

Additional Charge for final distribution

Additional Charge for standby (waiting to unload) past 4 hours

Emergency Power Generators

As directed by the Town of Davie, AshBritt has the capability to provide emergency power generators to supply temporary electricity to critical Town facilities. Prior to establishing pricing for temporary generators it is necessary to collect technical information regarding the potential type and use of power at each facility indicated by the Town. It is also necessary to determine the Town's needs for technicians and the availability of emergency fuel supply. Unlike other emergency commodities power generators must be tailored to the specific need.

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|----------------------------|-----------|
| Emergency Power Generators | Price TBD |
|----------------------------|-----------|

Demolition of Structures, Debris Removal from Private Property (ROE)

As directed by Town of Davie, AshBritt shall demolish unsafe structures and remove debris that has been determined by the Town to be a threat to the health and safety of the public. Examples of enabling elected body resolutions and other necessary documentation for the right-of-entry (ROE) process are provided by the technical assistance experts working with AshBritt and the Town of Davie. Debris generated through the ROE program will be placed on the right-of-way and collected as part of the ROW debris program.

Compensation per attached hourly rate schedule

Hourly Equipment Schedule

*With Operators for Emergency Road Clearance, Leaning Trees,
Hanging Limbs, and Debris Removal From Private Property (ROE)*

| <u>Equipment</u> | <u>Hourly</u> |
|---|---------------|
| 210 Prentice Loader | \$140.00 |
| Self Loading Prentice truck - 25 to 40 yard dump body | \$130.00 |
| Wheel Loader, John Deere 544 or equivalent – 2 /12 to 3 yard bucket | \$105.00 |
| Tandem Dump Truck – 16 to 20 yards | \$ 75.00 |
| Mini Loader Bobcat or equivalent | \$ 55.00 |
| D6 Dozer or equivalent | \$115.00 |
| Excavator, Cat 325 or equivalent w/ debris loading grapple | \$125.00 |
| Wheel Loader, John Deere 644 or equivalent – 3 to 5 yard bucket | \$115.00 |
| Chainsaw Operator with gear | \$ 35.00 |
| Supervisor with pick-up truck | \$ 45.00 |
| Safety Manager with pick-up truck | \$ 45.00 |
| Mechanic's Truck with tools | \$ 45.00 |
| Flagmen for traffic control | \$ 28.50 |
| Trash Transfer Trailers - 110 yard with Tractor | \$125.00 |
| Bucket Truck - 50 cubic yard bed | \$135.00 |
| Equipment Transports | \$ 90.00 |
| Clerical | \$ 35.00 |
| Laborers | \$ 25.00 |
| Mobilization and Demobilization | A Pass Thru |